

**CONDITIONS VOLUNTARILY PROFFERED FOR THE RECLASSIFICATION OF
PROPERTY IDENTIFIED AS TAX PARCEL 002 9A, GPIN C20B-3184-2547 AND TAX
PARCEL 002 9A, GPIN C20B-3696-2909**

THESE PROFFERED CONDITIONS are made this _ day of May, 2004 by **64 ENTERPRISES, L.L.P.**, a Virginia limited liability partnership and **FORD'S COLONY FIRST CHOICE REALTY, INC.**, a Virginia corporation (together with their respective successors in title and assigns, the "Owner").

RECITALS

A. 64 ENTERPRISES, L.L.P. is the owner of a parcel of land located in York County, Virginia, one with an address of 1001 Newman Road and being Tax Parcel 002 9A, GPIN C20B-3184-2547 and being more particularly described on Exhibit A hereto (the "64 Property").

B. FORD'S COLONY FIRST CHOICE REALTY, INC. is the owner of a tract or parcel of land located in York County, Virginia, with an address of 2001 C Newman Road and being Tax Parcel 002 9A, GPIN C20B-3696-2909 and being more particularly described on Exhibit B hereto (the "First Choice Property").

C. 64 ENTERPRISES, L.L.P. has contracted to purchase the First Choice Property conditioned upon the rezoning of the Property.

D. The 64 Property is now zoned GB. The First Choice Property is now zoned RR. The 64 Property and the First Choice Property are hereinafter called the "Property". 64 ENTERPRISES, L.L.P, with the consent of FORD'S COLONY FIRST CHOICE REALTY, INC. has applied to rezone the Property from GB and RR to GB, with proffers.

E. Buyer has submitted to the County (i) a plan entitled "Conceptual Plan of Banbury Village, Two Parcels" prepared by Davis & Associates dated February, 2004 (the "Plan") for the

Property showing the Property divided into three phases of development delineated as Village A, Village B and Village C and (ii) a plan entitled “Key Master Plan Elements” prepared by Guernsey Tingle Architects dated May 2004 (the “Key Elements Plan”).

F. Owners desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned GB.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and Section 24.1-114 of the County Zoning Ordinance, Owner hereby proffers that the development of the Property shall be in strict accordance with the conditions set forth below. If the requested rezoning is not granted by the County, these Proffered Conditions shall be null and void.

CONDITIONS

1. Owners Association. All owners of lots within the Property by virtue of ownership of their lot shall be members of a property owners association (the “Association”) in accordance with Article IV, Division 17 of the Zoning Ordinance. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall provide for a Architectural Review Committee as described in Condition 5 below with the power to review and approve all site development and construction plans within the development.

2. Uses. (a) The following uses, otherwise permitted by right in the GB zoning district,

shall **not** be permitted on the portion of the Property shown and set out as **Village A** on the Plan:

Plant Nurseries & Greenhouses
Farmer's Markets
Private Clubs
Cemeteries
Theaters
Bowling Allies
Video Arcades
Skating Rinks
Golf Driving Ranges
Storage Shed & Utility Building Displays
Funeral Homes
Drive-in Restaurants (except drive-up window)
Small Engine Repair Shops
Auto & Truck Sales
Boat Sales
Taxi or Limousine Services
Wholesale Auction Establishments
Contractor's Storage Yards
Recycling Plants
Bus/Rail Terminals

(b) The following uses, otherwise permitted by right in the GB zoning district, shall **not** be permitted on the portion of the Property shown and set out as **Village B** on the Plan:

All of Village A excluded uses, plus
Convenience Stores
Auto Fuel Dispensing
Hotels & Motels

(c) The following uses, otherwise permitted by right in the GB zoning district, shall **not** be permitted on the portion of the Property shown and set out as **Village C** on the Plan:

All of Village A and Village B excluded uses, plus
Shopping Centers
Tourist Homes, Bed & Breakfasts
Indoor Family Amusement Centers
Banks
Restaurants
Retail & Mercantile Uses

3. Maximum Building Ground Floor Area and Height. All development on the

Property shall conform to the following requirements:

Section	Maximum Building Ground Floor Area Per Building	Maximum Building Height
Village A	15,000 S.F.	50 feet
Village B	10,000 S.F.	40 feet
Village C	5,000 S.F.	40 feet

4. Lighting. All street light poles on the Property shall not exceed 20 feet in height. All building mounted external lights on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. No glare defined as 0.1 footcandle or higher shall extend outside the property lines of the Property unless otherwise approved by the Zoning Administrator. There shall be no exposed neon or internally lit canopies permitted on the Property except as part of approved monument or building mounted signage.

5. Architectural Review. (a) Owner has submitted herewith as Exhibit C and the County has approved a set of Architectural Guidelines prepared by Guernsey Tingle Architects (as the same may be amended or supplemented from time to time as herein provided, the "Guidelines"). Any amendments to the Guidelines shall require the approval of the Zoning Administrator.

(b) The owner shall establish an Architectural Review Committee (“ARC”), which shall carry out and enforce the Guidelines. The ARC shall review architectural drawings for each building in the development and shall have the sole discretion to approve and reject specific building designs. The ARC shall also have the right to establish additional specific architectural requirements that amplify but are not inconsistent with the Guidelines, which requirements do not require County approval. The ARC shall include the Owner or its designated representative, an architectural consultant and, if selected by the Owner, other members of the Association.

(c) In addition to the approval of the ARC required by (b) above, architectural elevations of all sides of each building, including building materials and colors, shall be submitted to the Zoning Administrator with the site plan for the building and shall be subject to approval by the Zoning Administrator for conformity with the Guidelines. In the event the Zoning Administrator disapproves architectural plans submitted under the provisions of this section or recommends conditions or modifications which are unacceptable to the applicant, such plans shall be forwarded to the Planning Commission for review if, and only if, the reasons for disapproval or requiring modification stem from a failure to meet the provisions of the Guidelines. The plans shall be approved by the Planning Commission if it finds such plans to be in accordance with the Guidelines. If the planning commission finds that such plans do not meet the above stated criteria, it shall deny approval of the plans or shall approve them with reasonable conditions which implement the intent of the Guidelines. This section shall not be interpreted to confer upon the Planning Commission any right to override the decision of the Zoning Administrator on any issue not directly related to the specific additional requirements of the Guidelines.

6. Buffers. Owner will provide and maintain full width Type 35 transitional buffers on

the Property along the west (Fenton Mill Road frontage) perimeter, the north (Oaks at Fenton Mill) perimeter and the east (church) perimeter of the Property, regardless of the state of development of adjacent properties. Owner shall provide a Type 50 transitional buffer and berm at least six feet in height in the northeast corner of the Property generally as shown on the Key Elements Plan. Owner shall provide a landscape area a minimum of 35 feet wide along the Newman Road frontage of the Property. The landscape area shall consist of deciduous trees, evergreen trees, shrubbery and low berms designed by a landscape professional to enhance the views from Newman Road into the Property, complement the architecture of the buildings, and help screen views of automobiles and parking areas. All transitional buffers proffered hereby shall be subject to the standards and provisions of Section 24.1-243 of the Zoning Ordinance, including subsection 24.1-243(a)(4).

7. Entrances. There shall be no more than two entrances into the Property, ~~each located generally as shown on~~ in general conformity with the Key Elements Plan with the location of each entrance subject to the approval of the County and the Virginia Department of Transportation. Owner shall install a left turn lane with ~~125~~200 feet of storage and a 200 foot taper from east bound Newman Road into the main entrance into the Property. Owner shall install a right turn radius into each of the two entrances into the Property. The turn lane and radius improvements shall be designed and constructed in accordance with Virginia Department of Transportation standards and guidelines.

8. Internal Streetscapes. Internal streets as shown on Key Elements Plan shall be planted with street trees at 40 feet on center. Trees shall have at least a 2 1/2 inch caliper at time of planting. Species shall be one of the following: London Planetree, Japanese Zelkova, Littleleaf Linden, or Willow Oak ~~or Red Maple.~~

9. Pedestrian Connections. Pedestrian connections shall be installed between the Property and the proposed Oaks at Fenton Mill walking trail on the north side of the Property; and between the Property and the church parking lot on the east side of the Property, generally as shown on the Key Elements Plan. Internal pedestrian connections shall be provided between buildings on the Property. Pedestrian connections shall be at least 4 feet wide and be constructed of an all-weather surface.

10. Community Feature. Owner shall install a community architectural feature consisting of a village icon that is unique to the project, such as a clock tower, gazebo, or similar element that is the appropriate scale for the surrounding buildings. Maximum height shall be 30 feet above grade and maximum footprint shall be 16 feet by 16 feet.

11. Monument Signage. Project entrance and identification monument sign shall be installed and landscaped in the median of divided entry lane at the main entrance into the Property. In addition, all building and business signs shall be monument-style signs or building mounted signs. There shall be no more than four monument signs in addition to the project sign on the Newman Road frontage of the Property. Such signs shall be no more than eight feet in height and no larger than 50 square feet. All monument signs shall include no more than four colors.

_____ WITNESS the following signatures.

64 ENTERPRISES, L.L.P.

By:
Title:

FORD'S COLONY FIRST CHOICE REALTY, INC.

By:
Title:

STATE OF _____ AT LARGE
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this __ day of _____,
2004, by _____, as _____ of 64 Enterprises, L.L.P.,
on behalf of the partnership.

NOTARY PUBLIC

My commission expires:

STATE OF _____ AT LARGE
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this __ day of _____,
2004, by _____, as _____ of Ford's Colony First
Choice Realty, Inc., on behalf of the corporation.

NOTARY PUBLIC

My commission expires: